

Message Text

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FM AMEMBASSY BUENOS AIRES

TO SECSTATE WASHDC 1801

UNCLAS SECTION 1 OF 2 BUENOS AIRES 6068

E.O. 11652: N/A

TAGS: EINV, AR

SUBJECT: ARGENTINA'S NEW TRANSFER OF TECHNOLOGY LAW

1. SUMMARY: AFTER A LONG DELAY, THE GOA HAS PROMULGATED THE NEW TRANSFER OF TECHNOLOGY LAW (21,617). THE NEW LAW REPLACES A VERSION (20,794) PASSED DURING THE PERONIST REGIME WHICH WAS SO RESTRICTIVE THAT IT GREATLY REDUCED THE FLOW OF TECHNOLOGY TO ARGENTINA. THE NEW LAW MAINTAINS MANY RESTRICTIONS ON THE LICENSING OF TRADEMARKS AND TECHNOLOGY BUT ON THE WHOLE IS MORE LIBERAL. FOREIGN LICENSORS WILL BENEFIT FROM: THE ELIMINATION OF THE PROHIBITION OF PAYMENT FOR FOREIGN TRADE MARKS; THE ACCEPTANCE OF TECHNOLOGY CONTRACTS BETWEEN RELATED FIRMS SO LONG AS THEY ARE ON AN ARMS LENGTH BASIS; AND THE ACCEPTANCE OF CONTRACTS RESTRICTING EXPORTS TO MARKETS IN WHICH THE SUPPLIER OF TECHNOLOGY EITHER ALREADY PRODUCES OR HAS OTHER LICENSEES. ON THE OTHER HAND, FOREIGN LICENSORS, AND PARTICULARLY THOSE PROVIDING TECHNOLOGY FOR THE AUTOMOTIVE INDUSTRY, WILL BE DISAPPOINTED WITH THE LIMITATIONS ON ROYALTY PAYMENTS AND SOME OF THE OTHER OBLIGATIONS IMPOSED ON LICENSORS BY LAW. AS IN THE CASE OF THE FOREIGN INVESTMENT AND INDUSTRIAL PROMOTION LAWS, MUCH WILL DEPEND ON HOW THE IMPLEMENTING AUTHORITY

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(IN THIS CASE THE NATIONAL REGISTRATION OFFICE OF LICENSING AND TRANSFER OF TECHNOLOGY UNDER THE SECRETARIAT OF INDUSTRY) INTERPRETS AND ADMINISTERS THE LAW. THE MAIN PROVISIONS OF THE NEW LAW ARE SUMMARIZED BELOW:

2. THE TRANSFER OF TECHNOLOGY LAW COVERS ALL LEGAL ACTS, BOTH SUBJECT TO PAYMENT OR FREE, THAT HAVE AS THE

PRINCIPAL OR INDIRECT OBJECTIVE THE TRANSFER, LICENSING OF TECHNOLOGY, OR GRANTING OF TRADEMARKS BY PERSONS DOMICILED ABROAD TO FISCAL OR JURIDICAL PERSONS DOMICILED IN ARGENTINA. CONTRACTS CLASSIFIED SECRET AND SIGNED WITH MILITARY AND SECURITY FORCES AND OTHER ORGANIZATIONS CONNECTED WITH NATIONAL DEFENSE ARE EXEMPT FROM THE LAW.

3. THE FOLLOWING TYPES OF CONTRACTS MAY BE AUTOMATICALLY REGISTERED UNDER THE LAW WITHOUT PRIOR EXAMINATION:

A) THE ENTRY OF TECHNICIANS FROM ABROAD TO INSTALL AND SET INTO OPERATION FACTORIES OR MACHINERY OR TO UNDERTAKE REPAIRS.

B) TECHNICAL ASSISTANCE FOR REPAIRS OR EMERGENCIES.

C) CONTRACTS EITHER GIVING OR LICENSING WITHOUT CHARGE TRADEMARKSBETWEEN ASSOCIATED COMPANIES AS DEFINED IN ARTICLE 9 OF THIS LAW.

D) THE SUPPLY OF BASIC OR DESIGN ENGINEERING FOR THE INSTALLATION OR PUTTING INTO OPERATION MACHINERY AND EQUIPMENT BOUGHT ABROAD, SO LONG AS THAT SERVICE DOES NOT REQUIRE ADDITIONAL PAYMENT.

4. CONTRACTS NOT ELIGIBLE FOR AUTOMATIC REGISTRATION MUST BE EXAMINED BY THE IMPLEMENTING AUTHORITY. THIS TYPE OF CONTRACT MUST INCLUDE AS A MINIMUM THE FOLLOWING INFORMATION:

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A) IDENTIFICATION OF THE CONTRIBUTION OF THE SUPPLIER OF TECHNOLOGY OR TRADEMARK.

B) IDENTIFICATION OF THE CHARGES BORNE BY THE RECEIVER OF THE TECHNOLOGY OR TRADEMARK.

C) THE TERM OF THE CONTRACTUAL OBLIGATION.

D) THE TECHNICAL OBJECTIVES SOUGHT BY THE RECEIVER OF THE TECHNOLOGY.

E) A DECLARATION BY THE SUPPLIER OF TECHNOLOGY THAT HE KNOWS THE PRESENT LAW.

5. ALL CONTRACTS UNDER THE LAW ARE SUBJECT TO THE FOLLOWING PROVISIONS WHETHER THEY ARE INCLUDED OR NOT IN THE CONTRACT, UNLESS THE IMPLEMENTING AUTHORITY DECIDES TO THE CONTRARY:

A) THE SUPPLIER GUARANTEES THAT THE TECHNOLOGY TO THE TRANSFERRED WILL PERMIT THE RECEIVER TO ACHIEVE THE TECHNICAL OBJECTIVES SOUGHT.

B) THE SUPPLIER OF TECHNOLOGY WILL ENSURE EITHER DIRECTLY OR INDIRECTLY ADEQUATE TRAINING FOR THE ASSIMILATION AND USE OF THE TECHNOLOGY.

C) IF THE RECEIVER OF TECHNOLOGY OR TRADEMARKS HAS NO ALTERNATIVE BUT TO ACQUIRE CAPITAL GOODS, RAW MATERIALS,

OR PARTS FROM THE SUPPLIER OF TECHNOLOGY OR TRADEMARKS,
THE PRICE OF SUCH PURCHASES MUST CORRESPOND WITH THAT
PREVAILING IN THE INTERNATIONAL MARKET FOR SIMILAR GOODS.

D) THE RECEIVER SHALL PROTECT SPECIFIED TECHNICAL
SECRETS FOR THE PERIOD INDICATED IN THE CONTRACT.

E) IN CONTRACTS INCLUDING THE USE OF A TRADEMARK OR A
NAME OF THE SUPPLIER, THE RECIVER SHALL MAINTAIN THE
QUALITY LEVEL OF THE PRODUCTS OR SERVICES SPECIFIED IN
THE CONTRACT.

6. ARMS LENGTH CONTRACTS BETWEEN A LOCAL FIRM OF
FOREIGN CAPITAL AND ITS PARENT COMPANY OR ANOTHER
SUBSIDIARY OF THE LATTER MAY BE APPROVED BY THE
IMPLEMENTING AUTHORITY UNDER THE LAW SO LONG AS THE
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CONDITIONS OF THE CONTRACT ARE IN LINE WITH THOSE
ENTERED INTO BY INDEPENDENT COMPANIES. NONETHELESS,
THESE TYPES OF CONTRACTS ARE SUBJECT TO THE FOLLOWING
LIMITATIONS:

A) NO PAYMENT OR ROYALTIES WILL BE PERMITTED FOR THE
USE OF TRADEMARKS.

B) THE ANNUAL PAYMENTS BY THE LOCAL FIRM (WHICH CANNOT
CONSIST OF FIXED SUMS) ARE CONSIDERED DUE AT THE END OF
THE FISCAL EXERCISE AND CAN ONLY BE REMITTED ABROAD
AFTER THAT DATE.

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TO SECSTATE WASHDC 1802

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7. THE REGISTRATION OF A TECHNOLOGY CONTRACT MAY BE REJECTED FOR THE FOLLOWING REASONS:

A) THE TECHNOLOGY TO BE TRANSFERRED IS OBSOLETE.

B) THE TECHNOLOGY IS IN THE PUBLIC DOMAIN AND FREELY AVAILABLE.

C) THE CONTRACT PROHIBITS OR LIMITS EXPORTS BY THE RECEIVER, WITH EXCEPTION OF THOSE COUNTRIES WHERE THE SUPPLIER PRODUCES FOR HIS OWN ACCOUNT OR HAS AUTHORIZED EXCLUSIVE LICENSING, USE, OR SALE.

D) THE PAYMENT AGREED UPON THE TECHNOLOGY OR TRADEMARK TRANSFERRED IS EXCESSIVE IN RELATION TO THE DIRECT OR INDIRECT BENEFITS TO BE OBTAINED BY ITS USE. THE PAYMENT SHALL BE PRESUMED TO BE EXCESSIVE, UNLESS PROVED TO THE CONTRARY, IN THE FOLLOWING CASES:

1. CONTRACTS CONSISTING IN THE USE OF TRADEMARKS WITHOUT ANY CONTRIBUTION OF TECHNOLOGY AND IN ANY PAYMENT TO THE SUPPLIER WHICH EXCEEDS 1 PERCENT OF THE NET VALUE OF THE SALES OF THE PRODUCTS OR SERVICES WHICH USE SUCH TRADEMARKS.

2. THE CONTRACT COVERS TECHNOLOGY FOR THE AUTOMOBILE INDUSTRY AS DEFINED IN LAW 19135 AND THE PAYMENT TO THE SUPPLIER EXCEEDS 2 PERCENT OF THE NET VALUE OF THE SALES
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OR PRODUCTS MANUFACTURED USING SUCH TECHNOLOGY.

3. IN ALL OTHER CASES, IF THE PAYMENT TO THE SUPPLIER EXCEEDS 5 PERCENT OF THE NET VALUE OF THE SALES OF PRODUCTS MANUFACTURED OR SERVICES USING THE TRANSFERRED TECHNOLOGY. IN CONTRACTS CALLING FOR PAYMENT OF FIXED SUMS, THEN THE PERCENTAGE OF SALES EQUIVALENT WILL BE CALCULATED OVER THE TOTAL PERIOD OF THE CONTRACT.

E) CONTRACTS THAT OBLIGATE THE RECEIVER TO LICENSE IMPROVEMENTS ON THE TECHNOLOGY TRANSFERRED, UNLESS THERE IS A RECIPROCITY CLAUSE.

F) THE CONTRACT DOES NOT PERMIT THE RECEIVER TO OBTAIN IMPROVEMENTS OF THE TECHNOLOGY TRANSFERRED WHICH THE SUPPLIER MIGHT DEVELOP DURING THE PERIOD OF THE CONTRACT.

G) THE CONTRACT EXEMPTS THE SUPPLIER FROM THE RESPONSIBILITY IN CASES IN WHICH THE RECEIVER OF TECHNOLOGY MIGHT BE SUED BY THIRD PARTIES AS A RESULT OF USING THE TECHNOLOGY.

H) THE CONTRACT REQUIRES THE PURCHASE OF RAW MATERIALS, INTERMEDIATE PRODUCTS OR CAPITAL GOODS FROM A DETERMINED SOURCE.

I) THE CONTRACT SETS WHOLESALE AND RETAIL PRICES OR

UNJUST CONDITIONS FOR THE SALE OF GOODS AND SERVICES TO THIRD PARTIES.

J) THE CONTRACT REQUIRES THE RECEIVER OF TECHNOLOGY TO EMPLOY PERSONNEL, EXCEPT IN INSTANCES CONSIDERED INDISPENSABLE AND THEN ONLY WHEN REMUNIERATION IS THAT PREVAILING INTERNATIONALLY.

K) THE CONTRACT PERMITS THE SUPPLIER TO CONTROL OR REGULATE THE PRODUCTION OR MARKETING OF THE RECEIVER MORE THAN IS NECESSARY FOR THE PROTECTION OF THE RIGHTS IN QUESTION- E.G. LIMITING THE USE OR DEVELOPMENT BY THE RECEIVER OF HIS OWN TECHNOLOGY, OR SUBMITTING UNCLASSIFIED

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DIFFERENCES OF INTERPRETATION OR FULFILLMENT OF THE CONTRACT TO NON-ARGENTINE LAWS OR COURTS.

L) THE CONTRACT HAS CLAUSES THAT PROHIBIT WITHOUT JUSTIFICATION THE USE OF COMPETING TECHNOLOGY.

8. NET VALUE IS DEFINED AS THE VALUE OF FACTORY SALES, DEDUCTING DISCOUNTS AND INDIRECT TAXES.

9. IN CONTRACTS FOR THE LICESING OF INDUSTRIAL PROPERTY RIGHTS, THE TERM CANNOT EXCEED THE REGISTRATION AUTHORIZED AND SUBSEQUENT RENEWALS. IN THE CASE OF LICENSING OF UNPATENTED KNOWLEDGE, THE TERM CANNOT EXCEED THAT OF ITS FORESEEN OBSOLESCENCE, WHICH WILL BE PRESUMMED TO BE 5 YEARS UNLESS PROVED TO THE CONTRARY.

10. THE IMPLEMENTING AUTHORITY IS THE NATIONAL REGISTRATION OFFICE OF LICENSING AND TRANSFER OF TECHNOLOGY UNDER THE SECRETARIAT OF INDUSTRY. CONTRACTS SUBJECT TO THE LAW MUST BE PRESENTED TO THE REGISTRATION OFFICE WITHIN 30 DAYS OF SIGNING. THE REGISTRATION OFFICE MUST NOTIFY THE PARTIES TO THE CONTRACT OF ANY DEFICIENCIES WITHIN 15 DAYS OF PRESENTATION; OTHERWISE THE DOCUMENTATION WILL BE PRESUMED TO BE IN ORDER. THE REGISTRATION OFFICE MUST MAKE A DECISION ON THE CONTRACT WITH 90 DAYS. IF IT OBJECTS, THE PARTIES TO TE CONTRACT HAVE 15 DAYS TO ASK FOR A SUSPENSION OF THE PROCESS TO SATISFY THE OBJECTIONS MADE. AFTER RECEIVING A RESPONSE FROM THE PARTIES, THE REGISTRATION OFFICE THEN HAS 30 MORE DAYS TO CONSIDER THE CONTRACT. IF IT REJECTS THE CONTRACT, IT IS THEN RECONSIDERED BY THE SECRETARIAT OF INDUSTRY, WHICH MAKES THE FINAL DECISION.

11. FREE ENGLISH TRANSLATION OF COMPLETE TEXT OF THE LAW WILL BE POUCHED WHEN AVAILABLE.

12. COMMENT: WHILE THE NEW TRANSFER OF TECH- UNCLASSIFIED

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NOLOGY LAW IS NOT AS LIBERAL AS ONE WOULD HAVE LIKED (SOME PROVISIONS ARE SIMILAR TO THOSE IN THE ANDEAN PACT LEGISLATION ON TECHNOLOGY), IT IS CERTAINLY AN IMPROVEMENT OVER LAW 20,794 PASSED DURING THE PERONIST REGIME. FOREIGN LICENSORS OF TECHNOLOGY AND TRADEMARKS WILL BE PLEASED BY THE ELIMINATION OF THE PROVISION IN LAW 20,794 PROHIBITING PAYMENT FOR FOREIGN TRADEMARKS AND VIRTUALLY ABOLISHING THEM AS OF 1980; THE ACCEPTANCE OF CONTRACTS BETWEEN RELATED FIRMS SO LONG AS THEY ARE ON AN ARMS LENGTH BASIS; AND THE MORE LIBERAL TREATMENT ACCORDED TO EXPORT RESTRICTIONS OF PRODUCTS PRODUCED WITH THE TECHNOLOGY SUPPLIED. THEY WILL BE DISAPPOINTED, HOWEVER, WITH THE LIMITATIONS ON ROYALTY PAYMENTS, AND SOME OF THE OTHER OBLIGATIONS IMPOSED ON LICENSORS BY LAW. THE TWO PERCENT LIMITATION ON ROYALTIES FOR TECHNOLOGY FOR THE AUTOMOTIVE INDUSTRY WAS REPRODUCEDLY PUT IN BECAUSE THE PRICES OF AUTOMOBILES IN ARGENTINA ARE CURRENTLY SO HIGH THAT, ACCORDING TO SOME, THE SUPPLIERS OF TECHNOLOGY WOULD OTHERWISE RECEIVE EXCESSIVE PROFITS.

13. AS IN THE CASE OF THE FOREIGN INVESTMENT AND INDUSTRIAL PROMOTION LAWS, THE IMPLEMENTING AUTHORITY IS GIVEN CONSIDERABLE DISCRETION IN INTERPRETING THE PROVISIONS OF THE NEW LAW. MUCH WILL DEPEND, THEREFORE, ON THE ATTITUDE OF THE STAFF IN THE NATIONAL REGISTRATION OFFICE, AS WELL AS OF THE IMPLEMENTING REGULATIONS.
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Subject: ARGENTINA'S NEW TRANSFER OF TECHNOLOGY LAW
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